STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the Matter of TDS Metrocom	)	
	)	
	)	**Docket No. 01-0338**
Petition for Arbitration Pursuant to Section	)	
252(b) of the Telecommunications Act of 1996	)	
to Establish an Interconnection Agreement with	)	
Illinois Bell Company d/b/a Ameritech Illinois	)	

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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I. INTRODUCTION

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and, pursuant to Section 761.440 of the Commission's Rules of Practice, 83 Ill. Adm. Code 761.440, submits its Initial Brief in the instant arbitration proceeding.

II. PROCEDURAL BACKGROUND

This proceeding was initiated pursuant to a Petition (hereinafter, the "Arbitration Petition") for Arbitration Pursuant to Sections 251 & 252 of the Telecommunications Act of 1996 ('1996 Act"), 47 U.S.C. § 251 & 252, to establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois (hereinafter "Ameritech"), filed on April 20, 2001 by TDS Metrocom, Inc. (hereinafter, "TDS"). The Arbitration Petition included a draft of the Interconnection Agreement under negotiation by the parties, identified 70 unresolved issues with respect to such Interconnection Agreement, and detailed the position of each of the parties with respect to those issues.

On April 27, 2001, Hearing Examiner Michael Wallace held a pre-hearing conference. As a result of such conference, the Hearing Examiner set a schedule for party filings and continued the hearings to June 21 and 22, 2001. On April 30, 2001, Ameritech served its discovery responses to TDS's data requests. TDS filed its verified statements and its responses to Ameritech's discovery requests on May 9, 2001. On May 15, 2001, Ameritech filed its Response to the Arbitration Petition (hereinafter "Response to Petition"). In its Response to Petition, Ameritech identified two additional

arbitration issues ("AIT-5 and AIT-6"). Ameritech then filed its verified statements on May 22, 2001.

On May 25, 2001, TDS filed supplemental testimony to respond to the new issues raised in Ameritech's Response to Petition. Staff filed and served its requests for discovery on May 29, and June 6, 2001. Prior to Staff's submission of testimony in this proceeding, Ameritech and TDS resolved a few of the issues raised in this Arbitration proceeding. As a result, on June 12, 2001, Staff filed the verified statements of its witnesses, which statements addressed only those issues identified in the Arbitration Petition as Issue Nos. 28, 41, 66, 96, 101, 102, 107, 124,190, 196 and 197. Staff also filed additional data requests at this time.

Evidentiary hearings with respect to this proceeding were held in Springfield, Illinois on June 21 and 22, 2001. At the conclusion of the evidentiary hearings, the parties set a briefing schedule which provided for the filing of simultaneous initial briefs on July 12, 2001, a Hearing Examiners proposed arbitration decision on July 18, 2001, briefs on exceptions on July 24, 2001 and reply briefs on exceptions on July 27, 2001. The record was then marked "Heard and Taken".

III. SUMMARY OF STAFF'S POSITION

The remaining unresolved issues which Staff addressed in its testimony and at the hearings are the following: Issue Nos. 28, 41 and 190 (Ameritech's obligation to provide access to UNEs where facility modifications are required), 66 (Control of Adjacent Collocation Structures), 96 (Collocation Space Augmentation), 101 and 102

(Notice for Major Construction Projects and Scheduled AC or DC power work), 107 (Reciprocal Compensation for Terminating FX calls), 124 (Charges for Inaccurate Orders) 196 and 197 (Acceptance Testing). The following is a summary of Staff's positions with respect to these issues.

With respect to Issues No. 28, 41, 190, Staff believes that Ameritech's refusal to include language that references its region-wide FMOD policy is inappropriate. Staff agrees with TDS that its proposed additional language clarifies Ameritech's obligations.

Regarding Issue 28, Staff is concerned about the interpretation of the term "available" and notes that the Commission defined the term "available" in Ameritech's *Special Construction* tariff investigation. Staff wants to ensure that both parties agree that the Commission's definition applies here. In addition, Staff finds it contradictory to state that Ameritech may agree to do something that it is required to do by law since Ameritech's proposed language reads that "*CLEC may request and, to the extent required by law,* SBC-13STATE *may agree to provide* UNEs, *through the Bona Fide Request* (BFR) *process."* The language in an interconnection agreement should not be permissive with regard to compliance with laws or Commission orders and hence, Staff proposes to replace the word "may" with "shall" with respect to SBC's obligation. Staff also proposes to modify Ameritech's proposed language in Section 2.9.1.1 of Appendix UNE to reflect ongoing changes to Ameritech's FMOD policy.

With respect to issue 41, Staff is of the opinion that as soon as either the FCC or this Commission defines a new UNE, TDS should be able to order such UNE without going through a Bona fide request ("BFR") process. Once it has been defined as a UNE, it is an existing UNE and no BFR process should be necessary to order it. TDS should

not be required to order a newly defined UNE through the BFR process just because the parties have not yet agreed on language for a new Appendix. It is important that the BFR process only be applied in instances where TDS requests a network element that Ameritech is not legally required to provide. With respect to Issue 190, Staff views TDS' proposed language as clarifying. The discussion regarding Issue 190 is essentially the same as the one in Issue 28, the only difference being that Issue 190 deals exclusively with xDSL-capable loops, rather than UNEs in general.

With respect to Issue No. 66 (Control of Adjacent Collocation Structures), Staff recommends that the language proposed by Ameritech be rejected. It is Staff's opinion that Ameritech's language conflicts with the requirements in the Advanced Services Order. According to the FCC, although ILECs may have a legitimate interest in the design or construction parameters of adjacent collocation, ILECs are required to permit CLECs to procure or construct adjacent collocation structure, "subject only to reasonable safety and maintenance requirements."[1] Ameritech's proposal could grant it undue control over the entire adjacent collocation construction, planning and design decision processes for a number of reasons discussed in Staff's argument pertaining to this issue. Accordingly, Staff asks this Commission to reject Ameritech's proposed language.

With respect to Issue No. 96 (Collocation Space Augmentation), Staff recommends that Section 10.10 of Appendix Collocation be applied to such situations where CLECs seek to augment their collocation space. Staff makes this recommendation notwithstanding Ameritech's proposal that TDS would be permitted to

augment its collocation space only when it is using at least 60% of the space it already has. The issue of whether a CLEC would use additional collocation space depends on several industrial factors that are likely to affect each CLEC differently. Moreover, under Ameritech's proposal, there is a potential risk for discriminatory treatment among CLECs given that standards of measurements differ among CLECs because the amount of space occupied and utilization are likely to fluctuate among CLECs. As a result, Staff believes a fixed rule that sets an arbitrary fixed percentage of utilization is not suitable. Therefore, in Staff's opinion, Section 10.10 of Appendix Collocation adequately addresses Ameritech's concerns regarding the needs of all CLECs for additional space.

With respect to Issues No. 101 and 102 (Notice for Major Construction Projects and Scheduled AC or DC power work), Staff believes that Ameritech should notify a CLEC at least twenty (20) business days, except in emergencies, before the scheduled start date of a major construction project or AC or DC power work. With respect to Issue No. 107 (Reciprocal Compensation for Terminating FX calls), Staff believes that TDS is not entitled to charge reciprocal compensation for terminating FX calls. This Commission has previously ruled in ICC Docket no. 00-0332 that such calls are not subject to reciprocal compensation.[2] Further, in Issue TDS-219, TDS objects to the inclusion of the FX and Feature Group A ("FGA") appendices in the interconnection agreement since TDS is currently not offering any FX service or using any FA service. Yet, in the present issue TDS contends that Ameritech should pay TDS reciprocal

[1] First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 14 F.C.C.R. 4761, 4786, ¶ 44 (March 31, 2000).
[2] ICC Docket No. 00-0332 (August 30, 2000)

compensation when TDS terminates calls to TDS customers with FX service. Staff believes that TDS is essentially asking for payments on services that it does not plan to offer in the immediate future. Thus, TDS' position on Issue 107 is inconsistent with its own position in Issue 219. Since TDS does not want to include such provisions, the payment provisions should also not be included. Therefore, Staff recommends this Commission adopt Ameritech's proposed language regarding Issue TDS-107.

With respect to Issue No. 124 (Charges for Inaccurate Orders), Staff rejects Ameritech's proposal requesting TDS to indemnify Ameritech every time there is any inaccurate order through Ameritech's Operations Support System (OSS). While it is reasonable to hold parties causing mistakes responsible for those mistakes they caused, it is not reasonable to hold a party liable for the failures of the other party or its systems. Moreover, the current nascent state of Ameritech's OSS is not suitable for this type of proposal which appears to assume that Ameritech's OSS could never be responsible for any failure. Ameritech is still developing its OSS and the Commission has not certified its performance for the use of all carriers. In fact, the Commission is currently reviewing and monitoring the development of Ameritech's OSS in ICC Docket No. 00-0592, the outcome of which is not available. Consequently, Ameritech's proposal to charge TDS for erroneous transaction is, at the very least, premature. Therefore, Staff recommends this Commission to reject Ameritech's proposed language requiring TDS to compensate every time there is an incorrect order through Ameritech's OSS.

With respect to Issues No. 196 and 197 (Acceptance Testing), Staff recommends that TDS and Ameritech should perform Cooperative /Acceptance Testing as set forth in SBC-002-345-017 Unbundled xDSL (UNE) Acceptance/Cooperative Testing

Procedures for Network Field Technicians On June 25, 2001 Ameritech was scheduled to implement a these procedures for acceptance testing. Staff reviewed the details and procedures of the program Staff believes that these procedures represent an acceptable "framework" for Ameritech Acceptance Testing.

IV. ARGUMENTS

Issue No. 28:

Issue TDS-28 refers to Section 2.9.2 of Appendix UNE, in which TDS proposes to delete certain Ameritech language that , "makes it appear that Ameritech has no obligation to provide UNEs where facilities and equipment are not available." Nicholas Jackson Direct at 12. TDS seeks to include a reference to Ameritech's Facilities Modification and Construction Policy ("FMOD Policy"), which applies to Ameritech's five-state region and which was announced by Ameritech in Accessible Letter CLEC AM00-0153. Id. Moreover, TDS requests to reference a prior Order by the Wisconsin Commission ("Wisconsin Order") that made certain changes and amendments to the FMOD Policy. Id.

Ameritech's proposed language states, "*where facilities and equipment are not available,* SBC-13STATE *shall not be required to provide* UNEs. *However, a* CLEC *may request and, to the extent required by law,* SBC-13STATE *may agree to provide* UNEs *through a Bona fide Request* (BFR) *Process."*

Staff agrees with TDS that language reflecting Ameritech's obligations in situations where facilities modifications are required should be included in the parties' interconnection agreement. Ameritech has a region-wide FMOD Policy in

place and is therefore committed to provide access to UNEs in some instances where facilities modifications are required. Staff believes such commitment should be reflected in the interconnection agreement. In addition, Staff has two specific concerns regarding Ameritech's proposed language in Section 2.9.1 of Appendix UNE.

Staff's first concern is associated with the term "available" in the following language proposed by Ameritech, "*where facilities and equipment are not available,* SBC-13STATE *shall not be required to provide* UNEs." In ICC Docket No. 99-0535, the *Special Construction Order*, the Commission investigated Ameritech's application of its tariff governing special construction charges, pursuant to Section 9-250 of the Illinois Public Utilities Act[3] and established Ameritech's obligations in situations where facilities modification are required. The Commission noted that the "definition of available is crucial to the determination of when Ameritech is obligated to provide a CLEC access to particular UNE facilities.[4] The Commission went on to state, "If particular facilities are determined not to be 'available', ILECs have no duty to provide CLECs access to such facilities. As a general proposition, it may be said that the narrower the definition, the fewer opportunities CLECs will have to compete. Accordingly, Ameritech has an incentive to narrowly define 'available' so as to impair CLECs ability to compete."[5] In conclusion, the Commission determined that the definition of 'available' should not be left to Ameritech's unilateral revisions and directed Ameritech to include the following definition of 'available' in its special construction tariff:

[3] ICC Docket No. 99-0593 *Special Construction Order*
[4] Id.
[5] Id. At 18.

> *"A facility is considered available if the facility requested is located in an area presently (i.e., at the time at which a facility is requested) served by Ameritech Illinois."*[6]

Staff recommends that the Commission's definition of the term 'available' as determined in the Special Construction Order, be applied to situations described in Section 2.9.1 of Appendix UNE. Staff's recommendation is consistent with the Commission's intent in the Special Construction Order. According to the Commission:

> Interconnection agreements that rely solely on Ameritech's tariff to determine when special construction charges apply, however, cannot be said to be inconsistent with the Commission's conclusions in these matters. Notably, in situations where an interconnection agreement references 'available' network elements yet does not define available, the Commission's definition shall apply."

Such is the situation with the case at bar. Accordingly, as long as both parties agree that the Commission's definition of 'available' applies to situations described in Section 2.9.1 of Appendix UNE, Staff does not have any objections to such language proposed in the third sentence of Section 2.9.1 of Appendix UNE but would prefer that the language of the interconnection agreement reflect such understanding.

Staff's second concern regarding language proposed by Ameritech is found in the fourth sentence of Section 2.9.1 of Appendix UNE. The language reads, "*CLEC may request and, to the extent required by law,* SBC-13STATE *may agree to provide* UNEs, *through the Bona Fide Request* (BFR) *process."* Staff finds it contradictory to state that

[6] Id at 25

Ameritech may agree to do something that it is required to do by law. The language in an interconnection agreement should not be permissive with regard to compliance with laws or Commission orders. As a result, Staff proposes to replace the word "may" with "shall" with respect to SBC's obligation.

As a final point, Staff proposes to clarify Ameritech's obligations by referencing any changes to the FMOD Policy. Specifically, Staff proposes the language in Section 2.9.1.1 of Appendix UNE to read as follows:

> *"Nothing contained in this Appendix is intended to contradict or supersede commitments made by Ameritech-Illinois in Accessible Letter CLEC AM01-140, including all subsequent changes to the FMOD process."*

This ensures that there will be no confusion as to which Accessible Letter contains the most current FMOD policy.

Issue TDS-41:

In Section 5.2.1 of Appendix UNE, Ameritech defines the BFR as follows: "*A Bona Fide Request (**"**BFR") is the process by which CLEC may request SBC-AMERITECH to provide CLEC access to new, undefined UNE, (a "Request"), that is required to be provided by SBC-AMERITECH under the Act but is not available under this Agreement or defined in a generic appendix at the time of CLEC's request.*"[7]

TDS proposes to amend this language by adding that "*the BFR process will not be used forcurrently defined UNEs so long as CLEC does not request shorter provisioning intervals. Currently defined UNEs, where CLEC does not request shorter*

provisioning intervals, will be handled by the Facilities Modifications process in Accessible Letter CLEC AM00-153, or the modifications to those commitments as reflected in the [Wisconsin Order]"[8]

Staff agrees with TDS that its proposed additional language clarifies the scope of the BFR process. As discussed above in issue TDS-28, in situations where existing UNEs require facilities modifications, the FMOD policy, and not the BFR process, applies. Without the additional language proposed by TDS, Ameritech might argue that TDS has to issue a BFR even in situations where the FMOD policy would normally apply.

Staff's concern that Ameritech could potentially argue that the BFR process applies to existing UNEs, stems from the first sentence in Section 5.2.1 of Appendix UNE, which states that "a *Bona Fide Request ("BFR") is the process by which CLEC may request SBC-AMERITECH to provide CLEC access to new, undefined UNE, (a "Request"), that is required to be provided by SBC-AMERITECH under the Act but is not available under this Agreement or defined in a generic appendix at the time of CLEC's request.*" Staff cannot envision how Ameritech could be required to provide something under the Act when it has not been defined yet. As soon as either the FCC or this Commission defines a new UNE, TDS should be able to order such UNE without going through a BFR process. Once it has been defined as a UNE, it is an existing UNE and no BFR process should be necessary to order it. Staff is aware that Section 2.2.9 of Appendix UNE states that in the event the FCC or this Commission changes the list of required unbundled network elements, the parties shall make the necessary revisions to

[7] Ameritech Illinois' Response to TDS Petition for Arbitration, Appendix UNE, Section 5.2.1.
[8] Id.

this Appendix. [9] Nevertheless, TDS should not be required to order a newly defined UNE through the BFR process until such time the parties agree on language for a new Appendix.

As Staff indicated during the *Special Construction* proceeding, "the BFR process has important anti-competitive effects. It requires a CLEC to come up with a $2,000 deposit or agree to promptly pay the total preliminary evaluation costs incurred and invoiced by Ameritech. These costs may be a barrier to entry. The BFR process can also lead to delays in provisioning service. Ameritech may take up to 90 day just to quote a price for special construction."[10] Thus, it is important that the BFR process only be applied in instances where TDS requests a network element that Ameritech is not legally required to provide.

Issue TDS-66: Control Of Adjacent Space Collocation

TDS argues that since Ameritech will not be constructing the adjacent collocation structures, Ameritech should not be able to control the construction, planning and design. TDS believes that Ameritech's control could cause it to incur excess costs to comply with requirements Ameritech may impose. TDS argues, "There are sufficient local, state, and national standards that apply to the construction of buildings and underground structures." Direct Testimony of Cliff Lawson for TDS, pp. 15-16. Finally, TDS contends that the existing Ameritech Interconnection Collocation Service

[9] Tr. at 331-332.
[10] Docket No. 99-0593, Staff Exhibit 1.00 (Graves Direct) at 12.

Handbook for Physical Collocation, dated September 15, 2000, does not include the proposed language Ameritech requests to insert in this Agreement.[11]

Conversely, Ameritech believes its additional proposed language will allow it to retain reasonable control over the design, construction, and placement of adjacent structures on its property. It contends this is consistent with an ILEC's right to plan and design its facilities as recognized by the FCC. Ameritech also argues that the same provisions governing the use of collocated equipment within a centralized office building should apply to collocated equipment in an adjacent structure on the premises of a centralized office building.

The issue of control over adjacent collocation was addressed by the FCC in paragraph 44 of its First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability (hereinafter "Advanced Services Order") of March 31, 2000.[12] According to the FCC, although ILECS may have a legitimate interest in the design or construction parameters of adjacent collocation, ILECS are required to permit CLECs to procure or construct adjacent collocation structure, "subject only to reasonable safety and maintenance requirements."[13]

It is Staff opinion that Ameritech's proposed language appears to be in conflict with the requirements in the Advanced Services Order. Ameritech's proposal could grant it undue control over the entire adjacent collocation construction, planning and design decision processes for a number of reasons. First, throughout this proceeding

[11] See Direct Testimony of Cliff Lawson for TDS, pp. 15-6.
[12] First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, 14 F.C.C.R. 4761, 4786, ¶ 44 (March 31, 2000).

Ameritech did not spell out what it considers to be "reasonable restrictions."[14] Thus, it appears that there is no discernible limit on the amount of restrictions that Ameritech could impose on the CLECs. Secondly, Ameritech revealed that it does not have any experience in the adjacent collocation construction, planning and design processes because, no such request has been made by any CLECs in Illinois.[15] Thus, it is virtually impossible for Ameritech to provide reliable information on what could be considered to be reasonable restrictions. Thirdly, since Ameritech's proposal is ambiguous in meaning or application it is likely that Ameritech will apply those restrictions on ad-hoc or case-by-case basis varying from CLEC to CLEC. Thus, this raises a potential for frequent dispute as to whether the restrictions once imposed are fairly applied to all CLECS. Fourthly, if the application of Ameritech proposed restrictions were to lead to disputes, the cause of competition might be impeded, as parties would possibly have to halt construction and engage in dispute resolution process before the Commission.[16] In the light of these facts, Staff opposes the additional proposed language by Ameritech and recommends that it be rejected.

Issue TDS-96 Collocation Space Augmentation

In the Direct Testimony of TDS witness Cliff Lawson, TDS summarizes its position on this issue (which relates to Section 10.11 of Appendix Collocation) as follows:

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[13] *Id.*
[14] Tr. at.348-9.
[15] Tr. at. 346-7.
[16] Tr. at348-9.

> TDS Metrocom requests that it be allowed to augment its space at its discretion, so long as space is available. The Ameritech proposal is extremely arbitrary in nature, as it does not take into account the rate at which a CLEC may be growing or Ameritech's own intervals on augmenting space. TDS Metrocom would not augment space at the rates charged unless there was a real need to grow the equipment in a specific eligible structure. TDS Metrocom currently reviews its acquisition and growth statistics; equipment consumption and time frame to accomplish the space augment prior to making an application for additional space. The percentage of utilization can vary in terms of when we would request an augment. With the highest percentage of costs resting with TDS Metrocom in order to affect an augment, it seems reasonable that Ameritech be permitted to arbitrarily place a percentage figure on when this can occur.
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> TDS Direct Testimony (Lawson) at 26-27.

The foundation for Ameritech's position is the following:

> Ameritech Illinois proposes that TDS be permitted to increase the size of its collocation cage only when TDS is making use of at least 60% of the space it already has. Additionally, Ameritech Illinois will permit TDS to begin the application process so long as TDS expects to reach 60% utilization by the time the process is completed. This proposal is reasonable and balances the needs of a CLEC desiring additional space with the needs of other CLECs seeking space as well, particularly in light of the fact that there is little (or no) space available at some Ameritech Illinois central offices. TDS' position that it be able to increase the size of its collocation cage without any limitation is unreasonable.
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> Ameritech Issues Matrix at 14.

With respect to this issue, Staff believes an arbitrary rule that sets an arbitrary fixed percentage should not be accepted . Staff contends that determining, in a precise fashion, what constitutes 60% utilization would likely create disputes between the CLECs and Ameritech. According to Staff witness A. Olusanjo Omoniyi, the issue of whether a CLEC would use additional collocation space depends on several factors such as business plan, growth in terms of services and customers, equipment, cost, and

nature of service.[17] As a result, these factors are likely to affect each CLEC differently. Accordingly, Mr. Omoniyi went on to add "As of now, there is no information on how Ameritech would measure how a cage could be determined to have met the 60% utilization threshold. Also, the basis for selecting the 60% utilization remains unknown. Moreover, the standard of measurement is likely to vary from CLEC to CLEC because the amount of space occupied and utilization are likely to vary among CLECs. Thus, there could be potential for discriminatory treatment of CLECs."[18] Staff believes Section 10.10 of Appendix Collocation better addresses Ameritech's concern, the problem of space warehousing, a situation in which CLECs do not utilize its assigned collocation space. (See Appendix Collocation, Section 10.10) The provision includes numerous remedies that Ameritech can employ against any CLEC that fails to use its collocation space or may be attempting to engage in space warehousing. For example, according to Section 10.10, if a CLEC fails to utilize the space allocated to it, Ameritech can terminate its collocation arrangement.[19] In such a case, the CLEC would not only lose its space but Section 10.10 also provides that the CLEC shall be liable to Ameritech for all charges due for the terminated agreement. In Staff's opinion, this provision is more than adequate protection against space warehousing. Also, the provision sufficiently addresses Ameritech's concern regarding the needs of all CLECs for additional space. The unused space can be taken back from the non-using CLECs and then passed on to the CLECs that really want to utilize them.

[17] Verified Statement of Omoniyi at 14
[18] Id at 14.

[19] Id.

Issue No. 101: Required Notice Prior To A Major Construction Project.

At dispute in Issue 101 is how much notice should Ameritech be required to give TDS prior to a major construction project. TDS' position is that, except in emergencies, Ameritech should provide CLECs with written notice 20 business days before the commencement of a major construction project which would take place in the general area of the dedicated space or in the general area of the AC and DC power plants.[20] . TDS emphasizes that the construction projects at issue are major projects that potentially could affect service to TDS such as power work, HVAC work, and core drilling over the area where [TDS] equipment is [located].[21] In support of its position, TDS cites Ameritech's own internal document the "Ameritech Interconnector's Collocation Services Handbook":

> " **4.0.12** The Collocator is responsible for immediate verbal notification to Ameritech (Local Operations Center) of any outages or operational problems that could impact or degrade Ameritech's equipment and/or services and provide estimated clearing time for restoration. In addition, written notification must be provided within 24 hours. Ameritech will notify the Collocator prior to the scheduled start dates of all construction activities (including power additions or modifications) in the general area of the Collocator's Dedicated Space with potential to disrupt the Collocator's services. Ameritech will provide such notification to the Collocator at least ***twenty (20) business days*** where feasible before the scheduled start date of such construction activity." (*emphasis added)* Ameritech Interconnector Collocation Services Handbook pg.4[22]

Ameritech has agreed to give TDS at least five business days notice before undertaking construction in the vicinity of a TDS collocation arrangement or the power

[20] TDS Direct Testimony (Lawson) at 28
[21] Id. and Tr. at 147.
[22] TDS Direct Testimony (Lawson) at 28-29

plant serving that cage. [23] Ameritech asserts that five days adequately informs TDS while giving Ameritech the flexibility it needs to schedule such projects.[24]

Ameritech also argues that the guidelines set out in Ameritech's Collocator Handbook that TDS cites in support of its position should not apply in this instance.

> The Ameritech Illinois CLEC handbook is not an Interconnection Agreement….[T]he handbook is simply an aid for CLECs. TDS is attempting to circumvent the negotiations process and incorporate additional language into their agreement from Ameritech Illinois handbook. Moreover, the handbook makes clear that the 20 day notification period is applicable *only where feasible.* Ameritech Illinois has found the intervals provided for in the handbook for notification to CLECs of major construction or power work were not feasible and has adjusted them accordingly. [25] [26]. [Furthermore], TDS' requested language obligates Ameritech Illinois to an excessive interval that is imposed as a concrete interval rather than as an interval that Ameritech Illinois will strive to meet, where feasible and reasonable. [27]

Staff disagrees with Ameritech. As Staff witness Russell Murray stated, "if Ameritech insists that a CLEC should follow the Handbook, then it follows that Ameritech should also have to live by these rules."[28] Staff agrees with TDS' position that 20 business days notification, unless there is an emergency, is an acceptable time frame for major construction projects. [29]

Ameritech tried to confuse the issue by asserting that the CLEC Handbook reference (at 4.0.12) relates to situations where service may be *disrupted* and therefore is inapplicable to TDS-101. [30] However, as indicated by TDS witness Lawson, ***any***

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[23] Ameritech Direct Testimony (Bates) at 35
[24] Id.
[25] Of note, although Ameritech Witness Bates asserted that the Ameritech Handbook has been adjusted accordingly in her May 22, 2001 Direct Testimony, at the hearing she acknowledged that the language in the Handbook has not been changed and still reflects a notice timeframe of 20 business days. Tr. at 293.
[26] Id
[27] Ameritech Reply Testimony (Bates) at 8.
[28] Staff Verified Statement (Murray) at 3.
[29] Tr. at 351.
[30] Ameritech Reply Testimony (Bates) at 8.

time a major construction project is done there is a risk that disruption to services may occur. (*emphasis added).* [31] Mr. Lawson emphasized that companies need adequate notice because each major construction project is different and requires proper planning. "You have to understand each given scenario [in a major construction project] before you can make basically an effective plan for anything that may happen.[32] As Staff witness Mr. Murray concurred, proper notice should be given to the CLEC before Ameritech begins a major construction project because a CLEC must plan the timing of installation of new equipment, software upgrades and routine maintenance so that they all do not occur during the time of a major construction project.[33]

Ameritech also tried to emphasize that TDS and Staff did not include the words "where feasible" as a part of their proposals for a notification timeframe.[34] However, Staff Witness Mr. Murray did use such words in his recommendation and he further clarified any ambiguity specifying that "where feasible" equated to non-emergency situations.[35]

Staff believes that requiring Ameritech to provide at least 20 business days, unless there is an emergency, before the beginning of a major construction project is completely reasonable. As indicated by Ameritech Witness Bates, planning for a major construction project requires quite a bit of time because Ameritech must allow time to prepare for the project as well as order equipment and materials.[36] . Therefore, it follows that Ameritech usually knows well in advance of 20 business days that they will

[31] Tr. at 154
[32] Tr. at 155
[33] Tr. at 351-352.
[34] Ameritech Reply Testimony (Bates) at 9 and Tr. 292.
[35] Staff Verified Statement (Murray) at 3. and Tr. at 353-354.
[36] Tr. 305- 306

be undertaking a major construction project. Since the notification process for a major construction project only involves a written notification to the CLEC with the effective dates for the project, it is reasonable to expect Ameritech to be able to complete the notification process at least 20 business days, unless it is an emergency, before beginning a major construction project.

Issue No. 102: Required Notice Prior To Scheduled AC Or DC Power Work.

Ameritech has agreed to give TDS at least ten business days notice before undertaking major power work that may cause a disruption of power to TDS's collocated equipment. [37] TDS believes that Ameritech should give at least 20 business days notice. Again, TDS' position is that Ameritech's proposed interval is unreasonable and in contradiction with their own internal document as stated with regard to Issue TDS-101.[38] TDS' language requests:

> *Twenty (20) business days or such longer period as Ameritech may provide it self,* of any scheduled AC or DC power work or related activity in the Eligible Structure that will cause or has the risk of causing an outage or any type of power disruption to CLEC Telecom Equipment. SBC-13 State will provide CLEC with the alternate plan to provide power in the case of such outage. If SBC does not have an alternate plan, SBC will make reasonable accommodations to allow CLEC to provide alternate power.

(Emphasis added.) (Appendix Collocation, Section 17.3)

For the reasons set forth in Issue 101 above, Staff believes that 20 business days, unless there is an emergency, is an acceptable time frame for scheduled AC and DC power work.[39] Furthermore, since any scheduled AC or DC power work or related

[37] Ameritech Direct Testimony (Bates) at 36.
[38] TDS Direct Testimony (Lawson) at 29.
[39] Staff Verified Statement (Murray) at 4.

activity has the risk of causing an outage or disruption to the CLEC's services, the need for adequate notice is critical so that sufficient precautionary measures can be implemented by the CLEC.

Issue TDS-107

In Direct Testimony of Cliff Lawson, TDS summarizes its position on this issue as follows:

> It is TDS [Metrocom's] position that when Ameritech sets up an FX arrangement with its customer, TDS[Metrocom] should be entitled to charge reciprocal compensation for terminating the call. As a fundamental, operational matter, there is no way for TDS [Metrocom] to know which calls are FX and which are not. The entire reason for having FX service is that a call which might otherwise originate outside of a local calling area should appear to be, for all intents and purposes, a local call.
>
> Lawson Direct at 18.

Conversely, Ameritech asserts in its Issues Matrix that, "The calls on which Ameritech [Illinois] is saying it is not required to pay reciprocal compensation are calls from an Ameritech [Illinois] customer to a TDS customer with FX service. This Commission has previously ruled that such calls are not subject to reciprocal compensation, and should reiterate that ruling here." [40]

Staff agrees. In ICC Docket No. 00-0332 (August 30, 2000), the Commission concluded that "FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation."[41] Moreover, there is a clear inconsistency with respect to TDS' argument in Issue TDS-219 and how it relates to the issue at bar. In Issue TDS-219, TDS objects to the

[40] Ameritech Illinois Issues Matrix at 17.
[41] Arbitration Decision in ICC Docket NO. 00-0332 (August 30, 2000) at 9.

inclusion of the FX and Feature Group A ("FGA") appendices in the interconnection agreement since TDS is currently not offering any FX service or using any FA service. Yet, in Issue TDS-107, TDS contends that Ameritech should pay TDS reciprocal compensation when TDS terminates calls to TDS customers with FX service. Thus, TDS is asking for payments on services that it does not plan to offer in the immediate future. Staff views TDS' position as inconsistent and recommends Ameritech's proposed language be adopted by the Commission.

Issue TDS-124: Charges For Inaccurate Orders

With respect to Issue TDS-124, TDS asserts that due to the number of errors caused by Ameritech daily, and the changing processes and procedures set up by Ameritech, TDS cannot be held to 100% accuracy in every order. It also contends that Ameritech should only recover costs incurred in actually provisioning the order, since errors are sometimes detected and corrected before Ameritech provisions TDS' orders. Moreover, TDS opposes the proposal to indemnify Ameritech regardless of whether TDS is actually at fault. It believes that there are adequate indemnification provisions in the General Terms and Conditions (GTC). According to TDS, those provisions in the GTC "require a party to indemnify the other when the indemnifying party is at fault, but not in all other instances." See Direct Testimony of Nicholas J. Jackson for TDS pp21-23

On the other hand, Ameritech's position on Issue TDS-124 is the following:

> "TDS' errors in preparing and submitting orders cost Ameritech [Illinois] time and money. Ameritech [Illinois] is not asking TDS to guarantee 100% accuracy in every order. It is merely asking that TDS compensate Ameritech [Illinois] for any costs Ameritech [Illinois] incurs to process

and/or help correct TDS' mistakes. Further, Ameritech [Illinois] objects to TDS' unsubstantiated and unwarranted assertions that Ameritech [Illinois] causes a number of documented errors … on a daily basis, or that Ameritech [Illinois] has instituted confusing and ever changing processes or procedures."

Ameritech Issues Matrix at 19.

Staff is of the opinion that the current nascent state of Ameritech's OSS is not suitable for this type of proposal. According to Staff witness Omoniyi, "Ameritech is still developing its OSS and the Commission has not certified its performance for the use of all carriers." Verified Statement of Omoniyi at 16. Currently, the Commission is reviewing and monitoring the development of Ameritech's OSS in Docket 00-0592. The outcome of the review is not available. Therefore, Ameritech's proposal to charge TDS for erroneous transactions is, at the least, premature. In light of this fact, Staff believes that Ameritech should not be allowed to charge CLECs for errors that may result from the usage of its current OSS.Issue No. 190:

Issue TDS-190 is quite similar to issue TDS-28. The dispute centers around the question of whether a reference to Ameritech's FMOD Policy should be included in the agreement. Ameritech's language in Section 4.6 of Appendix DSL states that the agreement "*neither imposes on SBC-12STATE an obligation to provision xDSL capable loops in any instance where physical facilities do not exist nor relieves SBC-12STATE of any obligation that SBC-12STATE may have outside this Agreement to provision such loops in such instance*."[42]

TDS seeks to include that "*where facilities require modifications they will be handled under the facilities modification process in Accessible Letter CLEC AM00-153, or the modifications to those commitments as reflected in the [Wisconsin Order]*"[43]

For the same reasons stated in the discussion of issue TDS-28, Staff agrees with TDS and recommends that its proposed additional language be adopted. Such

additional language clarifies Ameritech's obligations in situations where facilities modifications are required. Ameritech does not deny that it is committed to its region-wide FMOD policy[44] and thus, Staff believes such commitment should be referenced in the parties' interconnection agreement.

Issue No. 196 Acceptance Testing.

The purpose of the Acceptance Test is to verify that a loop is ready for service. Both parties agree that Acceptance Testing should be performed, however, the dispute arises as to what should be included in the Acceptance Testing. Ameritech proposes the following language for section 8.2 of Appendix DSL:

> Should the CLEC desire Acceptance Testing, it shall request such testing on a per xDSL loop basis upon issuance of the Local Service Request (LSR). Acceptance Testing will be conducted at the time of installation of service request. All loops shall be tested to verify basic loop metallic parameters, continuity or pair balance.

(Appendix DSL 8.2)

TDS proposes to word the final sentence of the section stating that "all loops shall be tested to verify absence of load coils, excessive bridge taps, foreign voltage, grounds or other elements that make the loop unsuitable." [45] TDS asserts that "Ameritech has attempted to limit this issue to just their HFPL offering and not the loop types as called out."[46] TDS also contends that the language they are proposing covers requirements for delivering an xDSL capable

[42] Ameritech Illinois' Response to TDS Petition for Arbitration, Appendix DSL, Section 4.6.
[43] Id.
[44] Michael Silver Direct at 19.
[45] TDS Direct Testimony (Lawson) at 30.
[46] Id.

loop according to the industry definitions.[47] TDS is proposing that Ameritech agree to perform the tests that are required to ensure the loop meets its defined electrical characteristics before delivering the loop to TDS. [48]

Staff agrees with TDS that these tests are important to ensure that the loop meets its defined electrical characteristics before delivering the loop to TDS. Nevertheless, the information provided by Ameritech in the response to Staff's data request RWM 6.1 does indicate that the tests in question by TDS Metrocom are included in their written procedures.[49] Upon examination of SBC-002-345-017 Unbundled xDSL (UNE)-Acceptance/Cooperative Testing Procedures for Network Field Technicians (hereinafter "SBC A/C Testing "), which was scheduled to be implemented by Ameritech on June 25, 2001, Staff believes that Ameritech has addressed TDS' need to have all loops tested to verify the absence of load coils, excessive bridge taps, foreign voltage, grounds or other elements that make the loop unsuitable.[50] Therefore, Staff feels the SBC A/C Testing procedures should be followed and the language should be implemented into the interconnection agreement between TDS and Ameritech.

SBC A/C Testing sets out procedures for performing Acceptance Testing for Unbundled xDSL UNEs. The accompanying flow chart and procedures are quite extensive. Both the flow chart and the written procedures: (1) provide phone numbers for the Ameritech Local Operations Center/LOC; (2) describe the tests that are to be performed by the technician; (3) detail how the technician is

[47] Id.
[48] Id.
[49] Staff Exhibit 4.
[50] Id.

to close out the work order or trouble ticket, as well as indicates who the technician is to refer the work order or trouble ticket to if there is a problem. According to the procedures in SBC A/C Testing, the conditioning that TDS is seeking is performed in other tests (loop testing, testing for load coils) prior to the initiation of the acceptance testing. [51]

Furthermore, Ameritech clarified its position at the hearing when Ameritech Witness Silver was asked if it was his claim that TDS is trying to get Ameritech to perform conditioning as a part of [acceptance] testing. [52] . Mr. Silver indicated that he "was trying to get at is not so much trying to perform conditioning as part of the [acceptance] testing as much as that the conditioning has already been taken care of prior to the [acceptance testing].[53] The methods and procedures, [SBC A/C Testing], provides that Ameritech will test for load coils on xDSL loops prior to acceptance testing.[54] TDS's proposed language for Appendix DSL Section 8.2 which states "all loops shall be tested" infers that it's part of the acceptance test.[55] . However, as indicated from [SBC A/C Testing] the test is done prior to the acceptance testing. [56]

Staff feels that the methods and procedures set forth in SBC A/C Testing are an acceptable "framework" for acceptance testing which adequately address TDS' need for the testing of a loop to determine that it is ready for service. So long as the interconnection agreement clearly requires Ameritech to perform the

[51] Id
[52] Tr. at 230
[53] Id.
[54] Tr. at 245.
[55] Tr. at 246
[56] Id.

SBC A/C Testing,as directed above, TDS's proposed language is not necessary and may also create confusion regarding the coverage of acceptance testing.

Issue No. 197 Should Ameritech be relieved of their obligation to perform acceptance testing

Staff feels that Acceptance Testing should be performed as requested by the CLEC. However, the issue as set forth in Appendix DSL, section 8.3.5 becomes: "how long should a technician have to wait for someone to either initially answer the phone or answer the phone after being placed on hold?" Staff recommends that this issue be addressed in the six-month review of the SBC/Ameritech Wholesale Performance Plan, which is currently underway.

V. CONCLUSION:

For all of the foregoing reasons, we request the Hearing Examiners accept Staff's recommendations in their entirety as set forth herein.

Dated: July 12, 2001

Respectfully submitted,

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